



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 848 OF 2005

The State of Maharashtra
Through Shamshoddin Nasiroddin Kazi
Age : 35 yrs, R/o Tambri, Osmanabad Appellant

Versus

1. Mohd. Walioddin Kazi
Age : 58 yrs, occ : business
2. Mohd. Burhanoddin Kazi
Age : 30 yrs, occ : business
3. Mohd. Nizamoddin Kazi
Age : 26 yrs, occ : business
4. Mohd. Jahiroddin Kazi
Age : 28 yrs, occ : business
5. Samioddin Hamiyoddin Kazi
Age : 20 yrs, occ : education
6. Aminabegum Walioddin Kazi
Age : 30 yrs, occ : household
7. Tabasumbegum Burhanoddin Kazi
Age : 20 yrs, occ : household
8. Salibegum Jahiroddin Kazi
Age : 18 yrs, occ : household

All r/o Tambri area, Osmanabad. Respondents

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Mr. D.J. Patil, A.P.P. for the appellant State.
Mrs. Unezza T. Pathan, Advocate holding for Mr. Y.M. Khan,
Advocate for the respondents.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 26 FEBRUARY 2025.

JUDGMENT :

1. The appellant-State has filed this appeal challenging the acquittal of present respondents, who are the original accused in Regular Criminal Case No. 370/2001, from the offences under Sections 147, 148, 323, 452, 341, 427, 404 read with Section 149 of the Indian Penal Code (for short, "I.P.C"). at the hands of learned Chief Judicial Magistrate, Osmanabad i.e. the learned trial Court under judgment and order dated 15.09.2005.

2. The case of prosecution, in brief, is as under :

The complainant Shamshoddin was in possession of a house in Tambri Shivar, Osmanabad. There was certain dispute over the said property between himself and the accused persons. On 03.09.2001 at about 1.00 p.m. all the accused came to the said house with certain household articles in one tempo and then attempted to take forcible possession of the said house by throwing away utensils and articles of the complainant from the said house. On making resistance, they tied the complainant with telephone wire and also beat him with stick and kick blows. When his wife intervened, they locked her in one room. One of the persons gathered there intimated police about the incident. Police then

arrived and rescued the complainant and sent him to hospital. Crime was registered against the respondents/accused and on completion of trial, the learned trial Court acquitted all the accused from the aforesaid charges.

3. The learned A.P.P. strongly submitted that the complainant and his wife have narrated the incident as per the prosecution story and their evidence is also corroborated by the Investigating Officer. As such, he prayed for conviction of the respondents/accused by setting aside the impugned judgment.

4. On the contrary, the learned Counsel for the respondents/accused pointed out that the prosecution examined 8 witnesses, but only complainant, his wife and Investigating Officer have supported the prosecution case and rest of the witnesses did not support the prosecution case. According to her, there are vital contradictions in the evidence led by complainant and his wife. Thus, she prayed for dismissal of appeal.

5. Heard rival submissions. Also perused documents on record alongwith the impugned judgment.

6. It is significant to note that though the complainant

deposed that the respondents/accused came to his house and tied him with telephone wire and his wife was locked in one room, but the complaint lodged by the complainant is silent on this aspect. Further, the Investigating Officer has also not seized any of the household articles allegedly brought by respondents/accused. The wife of complainant has also narrated a different story. According to her, all the accused came on the spot and tried to keep their household articles in the house of complainant and when they opposed, all the accused tied them and she was confined in one room and thereafter she heard noise of beating, shouting, etc. According to her, when the police arrived, she was set free from the said room. Thus, it can be gathered that when the actual incident took place, she was locked in the room and therefore, she could not witness the incident. Further, besides complainant and his wife and the Medical Officer, no other witness including panchas and eye witnesses have supported the prosecution case. Even it has come on record that the Investigating Officer when arrived on the spot, the quarrel was going on. Obviously the Investigating Officer could have inquired about the names of accused, but he did not make any arrest panchnama by recording the names of accused.

7. Further, the medical certificate at Exh.60 produced on record does not support the injuries stated by the complainant in open court. On the contrary, the medical certificate (Exh.60) indicates that all the injuries were simple in nature. Even the Medical Officer has stated that injury Nos.2, 4 and 5 in the said certificate were possible if a person tries to move on the ground especially in tied condition. Therefore, considering this admission the learned trial Court has opined that there was no possibility of having such injury due to an assault by the respondents/accused on the complainant.

8. Further, there are also contradictions between the evidence of complainant and Investigating Officer. According to Investigating Officer, one motorcyclist came to Police Station and informed him about the incident and therefore, he alongwith staff members went to the spot of incident where the incident was going on and on his arrival, it was stopped. However, the complainant had never stated that when the police came, they rescued him, stopped the quarrel and released him from tied condition. Thus, considering these contradictions also the possibility of false implication of accused at the hands of complainant on account of dispute

between them over the disputed house, cannot be ruled out. There is no supporting evidence from other witnesses as regards the prosecution case. Under such circumstances, the testimonies of complainant and his wife as well as Investigating Officer which are full of contradictions, cannot be relied for recording conviction against the respondents/accused. The rivalry between complainant and accused over the disputed house has already come on record. In view of the same, it appears that the learned trial Court has rightly acquitted all the respondents/ accused from the aforesaid charges levelled against them. As such, no interference is required in the impugned judgment and the appeal is accordingly dismissed and disposed of.

(SANDIPKUMAR C. MORE, J.)